

LEGAL BASE

45 CFR 302.36
45 CFR 303.7
45 CFR 303.73

AGENCY POLICY

Federal regulations require each state IV-D agency to assist other state IV-D agencies in their efforts to secure support. This requirement includes taking necessary action to enforce a support order granted in another state. If a IV-D agency fails to provide such assistance, a suit may be filed against that state agency in Federal District Court.

Suits may be filed only against IV-D agencies and only for their failure to cooperate. Thus, if a problem arises in a jurisdiction in which the IV-D agency has made an attempt to resolve the situation, no suit could be brought in federal District Court.

A Federal District Court hearing would result in one of two possible outcomes. The court may decide that the defendant state IV-D agency has in fact cooperated to an acceptable degree. If the court finds in favor of the defendant state, no further action can be taken. If the court finds that the defendant state IV-D agency has not cooperated, the court will order the defendant state to take action. That is, the defendant state will be ordered to obtain a judicial determination on the case in question at the state level. At no time would an actual order for support be issued by the Federal District Court.

Based on a Federal District Court finding that a state IV-D agency has failed to cooperate, the Department of Health and Human Services (HHS) may impose a 5% penalty against the IV-A agency in the defendant state. Thus, the defendant state could lose 5% of the federal monies provided for their ADC program. Since such severe consequences can result, Federal District Courts should only be used in extraordinary and extreme situations.

**AGENCY
PROCEDURES**

Not all cases are eligible for a hearing in Federal District Court. Only active IV-D cases for which there is an existing support order granted in the complaining state qualify for such a hearing. In addition, no case may be accepted by the Federal District Court without certification from HHS Office of Child Support Enforcement (OCSE).

In general, OCSE will grant certification only in those situations where the case has been refused a court hearing under URESA proceedings. Use of Federal District Court is intended only to generate action. It is not intended to provide a method for disputing or reviewing judicial determinations made in other states.

Prior to submitting an application for certification, the responding state must be notified that unless they provide a satisfactory response, an attempt will be made to file suit in Federal District court. The chain of

events necessary to secure the use of Federal District Court is as follows:

1. There is an existing Michigan order for support and the client is receiving FIP assistance or has requested support services via an FIA-1201, Non-FIP Child Support Services Application.
2. The prosecutor files URESA proceedings for enforcement of the Michigan order.
3. If the other state does not respond within 60 days, the prosecutor contacts the prosecuting attorney in the out-of-state jurisdiction. In this letter, the prosecutor may wish to make reference to the Federal regulation 45 CFR 303.7, regarding cooperation with other states.
4. If the prosecuting attorney in the other state does not respond within 30 days, the prosecutor sends another follow-up letter to the prosecuting attorney and a copy is sent to the director of the out-of-state IV-D agency. In this letter, the prosecutor should indicate that the situation may be referred to the IV-D agency in Michigan for action as specified in 45 CFR 303.73, regarding application to use the courts of the United States to enforce court orders.
5. If after 30 days no response is received, or the prosecutor is dissatisfied with the response received, the prosecutor may refer the situation to Michigan's Office of Child Support (OCS) Central Office.
6. OCS Central Office informs the director of the out-of-state IV-D agency that, pursuant to 45 CFR 303.73, if no response is received within 30 days Michigan will make application to use the Federal District Court.
7. If no response is received within 30 days, OCS Central Office may submit an application for certification to HHS Regional Office in accordance with the procedures outlined by OCSE.

When OCS Central Office receives the certification from OCSE, it will be forwarded to the prosecutor. The prosecutor is responsible for filing the action in Federal District Court and obtaining service on the appropriate defendants(s) and witnesses.

The complaining state retains total control regarding the continuation of action. A certified case does not have to be filed in Federal District Court, and after filing, dismissal can be requested at any point. For example, if after filing the other state initiates the requested action, Federal District Court involvement would no longer be necessary.